

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

BRIANNE DRESSEN, et al.,

Plaintiffs,

v.

ROB FLAHERTY, et al.,

Defendants.

Civil Action No. 3:23-cv-155

**PLAINTIFFS' UNOPPOSED MOTION TO RESCHEDULE INITIAL PRETRIAL
CONFERENCE AND TO EXTEND TIME**

Pursuant to Rule 16(b) of the Federal Rules of Civil Procedure and Local Rule 16.1, Plaintiffs, by and through their undersigned counsel, respectfully move the Court to reschedule the Initial Pretrial Conference, which is currently scheduled for August 23, 2023. Plaintiffs request that the Court reschedule the Initial Pretrial Conference to September 13, 2023, or to another subsequent date that is convenient for the Court around that time. Plaintiffs also request that, pursuant to Rule 6(b) of the Federal Rules of Civil Procedure and Local Rule 7.8, the Court extend the Government Defendants' deadline to respond to Plaintiffs' Complaint to August 31, 2023. In support of this Motion, Plaintiffs state as follows:

1. Plaintiffs filed this action on May 22, 2023.
2. On May 23, 2023, the Court issued an Order for Conference and Disclosure of Interested Parties (ECF No. 4) (the "Initial Order"), which set the Initial Pretrial

Conference for August 23, 2023. The Initial Order also requires that the Parties meet and confer pursuant to Rule 26(f) of the Federal Rules of Civil Procedure and submit a joint discovery/case management plan no fewer than ten days before the Initial Pretrial Conference, or by August 13, 2023.

3. As of June 1, 2023, Attorney General Merrick Garland and United States Attorney Alamdar Hamdani were served by certified mail: the Complaint (ECF No. 1), the Issued Summons dated May 23, 2023, the Civil Cover Sheet, and the Galveston Division Rules of Practice. *See* Exhibit 1.

4. Pursuant to Rule 12(a)(2) of the Federal Rules of Civil Procedure, the Government Defendants' original deadline to respond to Plaintiffs' Complaint was within 60 days after service on the United States attorney, or by July 31, 2023.

5. During the same time that Plaintiffs mailed service of process to the Government Defendants, Plaintiffs attempted to serve the Stanford Internet Observatory, Renee DiResta, and Alex Stamos (together, the "SIO Defendants") by certified mail: the Complaint (ECF No. 1), the Issued Summons dated May 23, 2023, the Civil Cover Sheet, and the Galveston Division Rules of Practice to the sole mailing address listed on the Stanford Internet Observatory's website.¹ Plaintiffs' legal assistant called the phone number listed on the Stanford Internet Observatory's website to confirm whether this was the correct mailing address for the SIO Defendants, and was informed that it was.

¹ <https://cyber.fsi.stanford.edu/io/about>.

6. Although Plaintiffs served process by certified mail to the address that they had confirmed, the service packages were returned stamped “Return to Sender Attempted – Not Known Unable to Forward” with the green return slips still attached.

7. On July 11, 2023, Alexander Sverdlov, Trial Attorney of the U.S. Department of Justice’s Civil Division, filed a Notice of Appearance (ECF No. 6) “as counsel for all Defendants in the above-captioned matter.” It appeared at that time that the U.S. Department of Justice would serve as counsel for all Defendants in this action, including the SIO Defendants, which Plaintiffs have sued as *de facto* government actors in this action. Notice of Appearance as counsel on behalf of all defendants in an action typically serves as proof of service on all defendants.

8. On July 28, 2023, the Court entered an Order (ECF No. 8) granting the Defendants’ unopposed motion to extend their response deadline to August 14, 2023. Counsel for the Parties had previously conferred by email and agreed that Plaintiffs would not oppose the motion.

9. On August 2, 2023, counsel for Plaintiffs met and conferred with counsel for Defendants via videoconference to discuss Defendants’ proposal to file a motion to stay this proceeding. Counsel for Plaintiffs stated that they would oppose such a motion.

10. On August 4, 2023, Defendants filed a motion to stay the proceeding (ECF No. 11) (the “Motion to Stay”), pending resolution by the Fifth Circuit Court of Appeals of an appeal arising from a preliminary injunction issued in *Missouri v. Biden*, a case in the District Court for the Western District of Louisiana. 2023 WL 4335270 (W.D. La., July 4, 2023), *appeal docketed* Case No. 23-30445.

11. Pursuant to Rule 5(g) of the Galveston Division Rules of Practice, Plaintiffs' response to Defendants' Motion to Stay is due by August 25, 2023.

12. It was not until Defendants filed the Motion to Stay that Plaintiffs were made aware that the SIO Defendants are represented by separate counsel who claimed that the SIO Defendants had "not been served and therefore take no position on the [Motion to Stay]." *See* Motion to Stay, n.1.

13. On August 10, 2023, the SIO Defendants were hand delivered service of process by Plaintiffs. *See* Exhibit 2.

14. Pursuant to Rule 12(a)(1) of the Federal Rules of Civil Procedure, the SIO Defendants must respond to Plaintiffs' Complaint within 21 days after being served, or by August 31, 2023.

15. On August 8, 2023, Counsel for Plaintiffs conferred with Counsel for the Government Defendants via videoconference to discuss the scope of discovery, the question of the SIO Defendants' representation and service, as well as the upcoming Initial Pretrial Conference and associated deadlines and requirements, including the submission of a joint discovery/case management plan.

16. Following that discussion, Plaintiffs believe that it would be a more productive use of the Courts' and the Parties' time and resources to reschedule the Initial Pretrial Conference to September 13, 2023 (or to a subsequent date that is convenient for the Court). This would allow the SIO Defendants sufficient time to review and prepare responses to the Complaint and Motion to Stay, and it would also enable the SIO Defendants to be fully involved in discussions with Plaintiffs and the Government

Defendants in connection with the Rule 26(f) meet and confer and preparation of a joint discovery/case management plan, in advance of the Initial Pretrial Conference.

17. In light of the scheduling concerns described above, as well as discussions with counsel for the Government Defendants, Plaintiffs also believe that an extension of the Government Defendants' response deadline to August 31, 2023—the same response deadline as the SIO Defendants—would appropriately balance the interests of resolving this action in a timely manner with an efficient use of the Court's and the Parties' time and resources.

18. The Government Defendants consent to the relief requested by this motion but believe that, for the reasons stated in their Motion to Stay, all deadlines should be stayed pending resolution of the appeal in *Missouri v. Biden*, 2023 WL 4335270 (W.D. La., July 4, 2023), *appeal docketed* Case No. 23-30445.

19. Plaintiffs thus respectfully request that the Court grant this motion and reschedule the Initial Pretrial Conference for September 13, 2023 (or a subsequent date that is convenient for the Court) while also extending the Government Defendants' response deadline to August 31, 2023 to align with the response deadline of the SIO Defendants.

Dated: August 12, 2023

Respectfully submitted,

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